

Manufacturers of cigarettes may seek a distributor's license and collect Illinois cigarette tax from retailers in this State if they meet the qualifications contained in the statute. See 35 ILCS 130/4b. (This is a GIL).

February 25, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated December 8, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Approximately a week and a half ago I discussed with you a license or permit for the COMPANY, manufacturer of BRAND cigarettes, to enable it to sell cigarettes directly to retailers in Illinois. PERSON, whose last name I do not know, advised me that only distributors who obtain cigarettes from three major manufacturers may distribute in Illinois. Of course, COMPANY is not interested in distributing cigarettes for competitors.

Under 35 ILCS 130/4b, the Illinois Department of Revenue can issue a permit to out of state tobacco manufacturers authorizing payment of taxes upon furnishing adequate security and extending to the sale of cigarettes manufactured in original packages under a sealed transparent wrapper. No charge is levied for such a permit and the tax is remitted with periodically filed returns accompanied by invoices which have been rendered to the purchasers.

I am not exactly sure how this works as there may be further regulations defining 35 ILCS 130/4b, but this statute clearly permits an out of state manufacturer to sell into the state without using a distributor. I will appreciate your consideration of this request.

We have enclosed copies of 86 Ill. Adm. Code 440.10 through 440.230, the Department regulations that govern the Illinois Cigarette Tax Act. These rules explain how Illinois taxes retailers who sell cigarettes. Cigarettes are taxed at a rate of 29 mills per cigarette, or 58 cents per 20-count package, through a system utilizing stamps that are affixed to the cigarette package. The stamps are generally affixed to the packages by the distributor, who adds the amount of tax to the price charged to the retailer.

86 Ill. Adm. Code 440.10(h) states as follows:

"The amount of the cigarette tax imposed by the Act shall be separately stated, apart from the price of the goods, by both

distributors and retailers, in all advertisements, bills and sales invoices."

Possession or sale of unstamped cigarettes has numerous legal ramifications. Section 13 of the Act creates a prima facie presumption that a violation of the Act occurs whenever any cigarettes without proper stamps affixed thereto are found in the place of business or in the possession of any person who is not a licensed distributor under the Act. Such cigarettes are subject to seizure under the provisions of Section 18 and 18a of the Act.

Section 18b of the Act additionally provides for a penalty of \$15 for each package of unstamped cigarettes in excess of 100 packages found in the possession of anyone other than a licensed distributor.

Section 24 (a) of the Act also provides that any person other than a licensed distributor who sells, offers for sale or has in his possession with intent to sell or offer for sale, an original package of cigarettes which are unstamped, is guilty of a Class 4 felony.

The Department is authorized to sell cigarette stamps only to persons holding valid licenses as distributors under the Act. Persons desirous of selling an inventory of unstamped cigarettes are advised to obtain distributor licenses in order to properly sell (or possess) such cigarettes. A variety of licensing, reporting and payment, and recordkeeping requirements are imposed upon distributors licensed under the Act.

Manufacturers generally do not incur cigarette tax on the shipment of untaxed or unstamped cigarettes from their factories to licensed distributors located in this State. The tax must be prepaid or pre-collected by the distributor and collection of such tax shall be evidenced by a stamp or stamps affixed to each original pack of cigarettes.

86 Ill. Adm. Code 440.50(d), enclosed, authorizes manufacturers to voluntarily register as "distributors" and receive a permit. Section 440.50(d) states as follows:

"d) The Department may, in its discretion, upon application, issue permits authorizing the payment of the tax imposed by the Act by out-of-State cigarette manufacturers who are not required to be licensed as distributors of cigarettes in this State, but who elect to qualify under the Act as distributors of cigarettes in this State, and who, to the satisfaction of the Department, furnish adequate security to insure payment of the tax, provided that any such permit shall extend only to cigarettes which such permittee-manufacturer places in original packages that are contained inside a sealed transparent wrapper."

Please note that Section 440.50(a) states as follows:

a) The Department, or any person authorized by the Department, will sell tax stamps only to licensed distributors. It shall be unlawful for any person to engage in the business as a distributor of cigarettes in this State without first having obtained a license or permit therefor from the Department. Application for a distributor's license shall be made to the Department in form as furnished and

prescribed by the said Department and shall be accompanied by a joint and several bond in the amount of \$2,500.00. ***Except when the applicant is the manufacturer, no distributor's license shall be issued to an applicant unless he presents the Department with satisfactory proof in writing that he will be able to buy cigarettes directly from at least 3 major cigarette manufacturers.*** Each licensed place of business shall be covered by a separate license. (emphasis added)

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.